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10/566,167	01/27/2006	Michael Charles Kallen	KAL0108 US	2517

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EXAMINER

ANDRISH, SEAN D

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3672

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,167	Applicant(s) KALLEN, MICHAEL CHARLES	
	Examiner SEAN D. ANDRISH	Art Unit 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 - 18 is/are allowed.
- 6) ☒ Claim(s) 1, 5 - 9, and 12 - 14 is/are rejected.
- 7) ☒ Claim(s) 3, 4, and 11 is/are objected to.
- 8) ☒ Claim(s) 2 and 10 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species
Species I: Form with hooking members extending from top of the face section and t-shaped slots in the floor section, drawn to Figure 1; Species II: Form with t-shaped slots in flange extending from the top of the face section and hooking members extending forward from the floor section, drawn to Figure 10. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 8, 9, and 15 are generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including

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any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

2. During a telephone conversation with Lance Turlock on 31 January 2008 a provisional election was made with traverse to prosecute the invention of Figure 10, claims 1, 3 - 9, and 11 - 18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2 and 10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

3. The disclosure is objected to because of the following informalities: Figure 2 is not included in the brief description of the drawings.

Appropriate correction is required.

Claim Objections

4. Claims 12 and 14 are objected to under 37 CFR 1.75(c) as being in improper form because multiple dependent claims 12 and 14 depend upon another multiple dependent claim 11. See MPEP § 608.01(n). Accordingly, the claims 12 and 14 have not been further treated on the merits.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 6 - 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimada (5,531,547).

With regard to claims 1 and 8, Shimada discloses a composite form comprising: a floor section (2b) extending longitudinally rearwardly from a forward end of the floor section to a rearward end of the floor section, said floor section (2b) including: a plurality of horizontally spaced anchoring members (22) formed integrally with said floor section (2b) and located proximate to the rearward end of said floor section (2b); said anchoring members (22) for holdingly engaging at least one geogrid anchoring rod (4); and a plurality of drainage openings

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extending through said floor section for permitting the drainage of moisture through said floor section; a face section (2a) formed integrally with and extending longitudinally at an angle upwardly from said forward end of said floor section (2b) to a top end of said face section (2a), said face section (2a) comprising a first plurality of supporting ribs (2c) and a second plurality of supporting ribs (2d), said second plurality of supporting ribs (2d) intersecting said first plurality of supporting ribs (2c) to define a plurality of regions bounded by said ribs; a first coupling means (8) integral with said form for coupling said form with a first like form extending above said form; a second coupling means (opening bounded by 2c and 2d) integral with said form for coupling said form with a second like form extending below said form; and at least one geogrid anchoring rod (4) ([Figs. 1 and 3(a)]; column 3, lines 33 – 46; column 4, lines 22 - 28).

Regarding claim 6, Shimada further discloses each anchoring member (22) comprises a boss (22a), each boss (22a) including a hole extending through the boss (22a), the said holes in all bosses (22a) being axially aligned [Fig. 4(e)].

With regard to claim 7, Shimada further discloses drainage openings comprising a plurality of elongated drainage slots (spaces between vertical and horizontal reinforcement rods 2c, 2d in floor section) (column 3, lines 56 - 61).

Regarding claim 9, Shimada further discloses said anchoring members (22) holdingly engaging a pair of geogrid anchoring rods (17, unlabeled rod under anchor rod 14), one of said anchoring rods (17) extending through said anchoring members (22), the other of said anchoring rods (unlabeled rod under anchor rod 14) abutting against said anchoring members (22), an end portion of said geogrid being wrapped back and forth around said anchor rods (17, unlabeled rod

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under anchor rod 14) so as to tighten thereon when said geogrid is pulled in longitudinal tension away from said floor section (2b) ([Fig. 5d]; column 5, lines 9 – 13).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5 and 12 - 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada in view of Byles (6,161,776).

With regard to claims 5 and 12, Shimada discloses all of the limitations of the above claim(s) except for a plurality of hydroseeding screens formed integrally with said form. Shimada discloses a membrane sheet or vegetation mat (7A) ([Fig. 1]; column 3, lines 46 – 51) to prevent erosion, but fails to teach hydroseeding. Byles teaches hydroseeding screens (three layers of composite mat) formed integrally with a water control/distribution structure (mat) (column 3, lines 15 – 34; column 4, lines 21 – 22) to allow air, water, and nutrients to pass freely through the mat. Although Byles is silent regarding each one of said screens formed within a unique one of said regions bounded by said supporting ribs, it would have been considered obvious to one of ordinary skill in the art at the time the invention was made to apply the hydroseeding screen as taught by Byles to each of the unique regions bounded by said supporting ribs. Therefore, it would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the form as disclosed by Shimada with the

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hydroseeding screen as taught by Byles to allow air, water, and nutrients to pass freely through the retaining structure.

Regarding claims 13 and 14, Shimada in view of Byles discloses all of the limitations of the above claim(s) except for the size of the mesh screen openings. However, it has been established that the optimization of proportions in a prior art device is a design consideration within the skill of the art. *In re Reese*, 290 F.2d 839, 129 USPQ 402 (CCPA 1961).

Allowable Subject Matter

9. Claims 3, 4, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. A earth-stabilizing structure comprising a face section containing a flange with t-shaped slots in combination with a floor section containing t-shaped hooking members extending from the front of the floor section is not shown in the prior art.

10. Claims 15 – 18 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN D. ANDRISH whose telephone number is (571)270-3098. The examiner can normally be reached on Mon - Fri, 7:30am - 5:00pm, Alternate Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/
Primary Examiner, Art Unit 3672

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Primary Examiner
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SDA
2/26/2008